STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

████████
████████
████████
████████

DECISION
Case #: MDV - 175392

PRELIMINARY RECITALS

Pursuant to a petition filed July 7, 2016, under Wis. Stat., §49.45(5), to review a decision by the La Crosse County Dept. of Human Services regarding Medical Assistance (MA), a hearing was held on August 23, 2016, by telephone.

The issue for determination is whether the county agency correctly determined the date of application.

PARTIES IN INTEREST:

Petitioner:

████████
████████   █
████████   █
████████

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703
By: ████████
La Crosse County Dept. of Human Services
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:
Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1.   Petitioner (CARES #████████) is a resident of La Crosse County.

2.   Petitioner's daughter mailed an application for nursing home MA to the county agency at the correct address.

3. The application was received by the agency on February 26, 2016. The county processed it with that date. Petitioner had divested assets, and based upon the application date the county determined that a 405 day divestment penalty period would start effective February 26, 2016.

DISCUSSION

When an individual, the individual's spouse, or a person acting on behalf of the individual or his spouse, transfers assets at less than fair market value, the individual is ineligible for MA coverage of nursing facility services. 42 U.S.C. 1396p(c)(1)(A); Wis. Stat., §49.453(2)(a); Wis. Admin. Code, §DHS 103.065(4)(a); MA Handbook, Appendix 17.2.1. Divestment does not impact on eligibility for standard medical services such as physician care, medications, and medical equipment (all of which are known as "MA card services" in the parlance). The penalty period is the number of days determined by dividing the value of property divested by the average daily nursing home cost to a private pay patient (currently $252.95). MA Handbook, App. 17.5.2.

Under current law the divestment period begins when all three of the following have occurred: the person applies for MA, the person enters a nursing home or meets a nursing home level of care, and the person meets all other eligibility requirements. Wis. Stat., §49.453(3)(a)2; MA Handbook, App. 17.5.3.

The date of application is the date that the agency receives a signed application. Wis. Admin. Code, §102.04(12); MA Handbook, App. 2.6.1.

In this case the agency determined that the divestment period began on February 26, 2016. That is the date that the application was received by the agency; the other two criteria were met prior to that date.

The best evidence is that the application was received by the county agency on February 26, 2016. Petitioner's representatives testified that it was mailed on September 21, 2015. There are three explanations for the late date of receipt. The representative is not being truthful about the date it was mailed (unfortunately the envelope is lost so a postmark is unavailable), the post office misplaced it for several months, or it was received at the agency and was misplaced until it was date stamped February 26, 2016. There is no provision for determining an application date earlier than the date received based upon good cause or mistake of the postal service. The third possibility cannot be proven; all we have is the date stamp. With that, the rules clearly require that the date of application is the date received by the agency. Without evidence that the agency received it earlier than the date stamp, I must conclude that the application date was determined correctly to be February 26, 2016.

CONCLUSIONS OF LAW

The agency correctly determined the start date of a divestment penalty based upon the date that the application for MA was received by the county agency.

THEREFORE, it is **ORDERED**

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison, Wisconsin, this 31st day of August, 2016

\s_____
Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 31, 2016.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability